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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,

Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,  
Defendants.

VIDEOTAPED DEPOSITION OF J.D. STRONG  
TAKEN ON BEHALF OF THE DEFENDANTS  
ON APRIL 9, 2009, BEGINNING AT 8:40 A.M.  
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

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On behalf of the DEFENDANT-TYSON FOODS, TYSON CHICKEN,  
TYSON POULTRY AND COBB-VANTRESS, INC.:

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On behalf of the DEFENDANT-PETERSON FARMS, INC.:

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REPORTED BY: Laura L. Robertson, CSR, RPR

**Exhibit 8**

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1 pollutants to waters of the state, generally.

2 Q. Okay. Is it your understanding, Mr. Strong,  
3 that the statute that you just referred to and the  
4 management plans that are prepared pursuant to those  
5 statutes prohibit the overapplication of poultry  
6 litter?

7 A. I'm not sure -- Okay, what was the question  
8 again? I'm sorry. I really am trying to follow here  
9 but --

10 Q. Is it your understanding, Mr. Strong, that  
11 the statutes that you just referred to and the  
12 management plans for farmers that are prepared  
13 pursuant to those statutes prohibit the  
14 overapplication of poultry litter?

15 A. I believe that the statutes in regulatory  
16 programs do prohibit it, yes.

17 Q. What about the nutrient management plans or  
18 the animal waste management plans, do they prohibit  
19 the overapplication of poultry litter on the Oklahoma  
20 side of the basin?

21 MR. LENNINGTON: Object to the form.

22 THE WITNESS: I believe the management plans  
23 spell out certain application criteria.

24 Q. (BY MR. GEORGE) And if a grower is  
25 complying with those application criteria, are they

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1 over applying litter or are they applying an  
2 appropriate amount of it?

3 A. I think in some cases they can be over  
4 applying.

5 Q. Even when they are complying with an animal  
6 waste management plan?

7 A. Yes.

8 Q. What is your basis for that belief?

9 A. The management plans are designed based on  
10 very broad general criterion and on-site specific  
11 basis, you can still have runoff of pollution into the  
12 waters of the state, which is prohibited by state law.

13 Q. Have you ever seen an animal waste  
14 management plan, Mr. Strong?

15 A. I have -- I'm sure I have glanced at them  
16 before, yes.

17 Q. Okay. And just so I'm clear, it is your  
18 position, Mr. Strong, that a farmer who receives an  
19 animal waste management plan that has been approved by  
20 the Oklahoma Department of Agriculture for land  
21 application of poultry litter on their particular farm  
22 can follow that plan in terms of the application rates  
23 and areas, every jot and tittle and still be out of  
24 compliance with Oklahoma law; is that right?

25 A. I think that that is possible, yes.

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1 pollution, but the phosphorus that comes out of a bag  
2 from Home Depot that runs off into the stream is not  
3 pollution. Is that what you're telling me?

4 MR. LENNINGTON: Object to the form.

5 THE WITNESS: As far as the state law is  
6 concerned, that's true.

7 Q. (BY MR. TUCKER) Okay. Now, you have told me  
8 that a farmer can get a nutrient management plan and  
9 he can comply with that nutrient management plan and  
10 still be violating the law because there can be site  
11 specific runoff from his application of poultry  
12 litter; is that right? Is that what you told us? Did  
13 I get that right?

14 A. Yes, I believe so, yes.

15 Q. Now, what part of the nutrient management  
16 plan tells the farmer, makes that disclosure to the  
17 farmer, does any part of the plan tell him that?

18 A. I'm not familiar with every verse and word  
19 of the nutrient management plan, so I'm not sure if  
20 that is included in the nutrient management plan or  
21 not.

22 Q. Have you ever even looked at one?

23 A. I have glanced.

24 Q. Have you ever read one?

25 A. Not thoroughly.

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1 Q. Are those measures set out in a nutrient  
2 management plan?

3 A. There are some measures that would help to  
4 mitigate.

5 Q. If the farmer follows those measures that  
6 are in his nutrient management plan, is there  
7 something else, some magic thing that the farmer can  
8 use to determine that he's violated the law and  
9 allowed pollution to occur?

10 A. Again, I think it is possible for them to  
11 ensure that they are not causing violation of the law.

12 Q. How do they do that?

13 A. You simply not land apply the litter or have  
14 any runoff whatsoever from the site.

15 Q. Well, maybe I misunderstood. I thought the  
16 nutrient management plan that the farmer got courtesy  
17 of the state Department of Agriculture basically says  
18 you could apply it this many tons of litter to this  
19 field this year. Did I get that wrong?

20 MR. LENNINGTON: Object to the form of the  
21 question.

22 Q. (BY MR. TUCKER) Isn't that what it does?

23 MR. LENNINGTON: Object to the form of the  
24 question.

25 THE WITNESS: Again, I haven't thoroughly

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1 read through the nutrient management plans. I know  
2 they contain general guidelines for application rates.

3 Q. (BY MR. TUCKER) Are nutrient management  
4 plans written specifically for each farm?

5 A. They are written for a farm, but also employ  
6 some general guidelines, yes.

7 Q. Are they written by the farm or by the  
8 pasture that seeks application of litter, for which  
9 the farmer seeks application of litter?

10 A. I do not know the answer to that question.

11 Q. Well, I asked you to assume that a nutrient  
12 management plan, if you ever read one, would be broken  
13 down by pasture and would tell the farmer how many  
14 acres in that pasture could receive litter and how  
15 much litter per acre that pasture could receive for  
16 the year that he wants to put on litter, I ask you to  
17 make that assumption; okay?

18 A. Okay.

19 Q. If the farmer is told that he can put on  
20 three tons of litter per acre or two tons per acre and  
21 he applies two tons per acre to that farm, to that  
22 pasture as called for by his nutrient management plan,  
23 what more does the farmer have to do to ensure that he  
24 is not causing runoff that pollutes the waters of the  
25 state?

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1 A. Whatever else is necessary at his particular  
2 operation to ensure that he doesn't cause runoff to  
3 waters of the state.

4 Q. Well, what would that be, would he have to  
5 build a dam along the edge of the stream?

6 A. Possibly, depending on his operation.

7 Q. Does the Secretary of the Environment  
8 believe that farmers should build dams along the edges  
9 of streams?

10 A. I believe they should do what is necessary  
11 to ensure that there is no runoff of pollution to the  
12 water.

13 Q. Do you believe that ranchers should build  
14 fences along streams?

15 A. I believe that if that's what is necessary  
16 to not cause pollution, that that would be a good  
17 thing to do. I don't necessarily believe that they  
18 are required.

19 Q. So this is a rule, this to prevent runoff to  
20 the water to the state, really doesn't have any  
21 standard, does it, it is just kind of a, you're on  
22 your own to try to figure out whether it does or it  
23 doesn't, you can comply with your that the plan tells  
24 you that you can apply, but there is some unknown  
25 standard that only we know, we being you, the state of

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1 right?

2 A. I don't know whether or not the farmers know  
3 it.

4 Q. Can do it, can comply?

5 A. It is possible to violate the laws of the  
6 state while complying with a nutrient management plan.

7 Q. And that's because some phosphorus can run  
8 off?

9 A. Correct.

10 Q. How much?

11 A. I think --

12 Q. How much phosphorus?

13 A. It is a very site specific number.

14 Q. An 80 acre tract of land that has litter  
15 applied to it, nutrient management plan says you can  
16 put on three acres a year -- three tons per acre per  
17 year. How much phosphorus runs off that land?

18 MR. LENNINGTON: Object to the form.

19 THE WITNESS: I don't know. That's just a  
20 general --

21 MR. TUCKER: How much phosphorus would have  
22 to run off that land to cross your threshold that  
23 would make it pollution?

24 A. The law says zero runoff.

25 Q. Does phosphorus run off just plain dirt,



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1 A. They both get their root in a law, yes.

2 Q. Regardless of whether one is federal and one  
3 state?

4 A. One is state.

5 Q. But they are both created, the requirement  
6 is created by a law; correct?

7 A. Correct.

8 Q. Okay. And they both allow discharge into  
9 the environment within the state of Oklahoma of  
10 phosphorus; correct?

11 MR. LENNINGTON: Object to the form.

12 THE WITNESS: The point source permit does,  
13 yes.

14 Q. (BY MS. LONGWELL) Okay. And when an animal  
15 waste management plan says you can land apply a  
16 certain amount of poultry litter to the land, to a  
17 specific land, is that not a permission to apply a  
18 certain amount of phosphorus into the environment  
19 within the state of Oklahoma?

20 A. I think that requires some sort of legal  
21 interpretation, but I don't necessarily believe that  
22 it does.

23 Q. Do you agree with me that poultry litter  
24 contains phosphorus?

25 A. Yes.